

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
COLUMBIA ROCK & AGGREGATES, INC.

Appellant,

vs.

SOUTHWEST AIR POLLUTION CONTROL  
AUTHORITY,

Respondent.

PCHB No. 201

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

This matter, the appeal of a \$250.00 civil penalty for an alleged violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, hearing officer) as a formal hearing in the Vancouver, Clark County, offices of respondent at 1:00 p.m., November 14, 1972.

Appellant was represented by its general manager, George Ledford. Respondent appeared through its counsel, James D. Ladley. Thomas E. Archer, Kelso court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were offered and

1 admitted.

2 On the basis of testimony heard and exhibits examined, the Pollution  
3 Control Hearings Board prepared Proposed Findings of Fact, Conclusions  
4 and Order which were submitted to the appellant and respondent on  
5 January 16, 1973. No objections or exceptions to the Proposed Findings,  
6 Conclusions and Order having been received, the Pollution Control Hearing  
7 Board makes and enters the following:

8 FINDINGS OF FACT

9 I.

10 In February, 1972, appellant set up and began operation of a  
11 permanent rock screening and crushing device (hereinafter referred to  
12 as "subject device") in a gravel pit at 913 Northeast 172nd Avenue,  
13 Vancouver, Clark County.

14 II.

15 Section 3.01(a) of respondent's Regulation I requires persons  
16 establishing a new air contaminant source to file with respondent a  
17 "Notice of Construction and Application for Approval". Section 1.04 of  
18 respondent's Regulation I defines air contaminants, but the Regulation  
19 does not list or specify "air contaminant sources".

20 III.

21 Appellant, of the opinion that subject device was not an air  
22 contaminant source, did not file with respondent a "Notice of Constructio  
23 and Application for Approval" at the time of establishment of the device  
24 in February, 1972.

25 IV.

26 On August 23, 1972, a field representative of respondent, noting

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

emissions from appellant's device, issued to appellant Notice of Violation CS 0771, citing Section 3.01(a) of respondent's Regulation I, and directing appellant to file an application for approval within two weeks.

V.

On August 28, 1972, the subject device emitted brown particulants of an opacity ranging from No. 1/2 to 3 on the Ringelmann scale for a period of four minutes.

VI.

Section 4.02(c) of respondent's Regulation I makes it unlawful to allow for more than three minutes in any one hour from equipment other than boilers using hog fuel the emission of an opacity exceeding No. 1 on the Ringelmann scale.

VII.

On August 29, 1972, respondent received from appellant an incompleated application for approval of subject device. On September 5, 1972, appellant completed the application.

VIII.

On August 30, 1972, respondent issued to appellant a Notice of Civil Penalty in the maximum allowable amount of \$250.00, citing two alleged violations of respondent's Regulation I: (a) establishment of an air contaminant source without first filing a Notice of Construction and Application for Approval, and (b) operation of an air contaminant source without adequate control equiprent. This Notice of Civil Penalty is the subject of this appeal.

IX.

Subject device was equipped with various water sprays.

From these Findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS

I.

Whether appellant should have filed with respondent an Application for Approval of subject device in February, 1972, is a close question. Respondent's Regulation I does not define air contaminant sources yet makes it unlawful to establish one without first filing an application of approval. Air contaminants, however, are defined in Regulation I. Appellant, therefore, had a base for determining whether subject device required approval. In this connection, it is noted that appellant equipped said device with water spraying equipment; said equipment obviously was included to suppress emissions. We conclude, therefore, that appellant probably had reason to believe subject device required an application for approval and that appellant was in technical violation of Section 3.01(a) of respondent's Regulation I for failing to make such application.

II.

On August 28, 1972, appellant's subject device was in marginal violation of Section 4.02(c) of respondent's Regulation I.

III.

In view of the close question attendant to the violation of Section 3.01(a) and the marginal violation of Section 4.02(c) of respondent's Regulation I, the maximum allowable civil penalty of

1 \$250.00 appears to be excessive.

2 Therefore, the Pollution Control Hearings Board makes this

3 ORDER

4 The appeal is denied, but the civil penalty of \$250.00 is remanded  
5 to respondent for the setting of a more appropriate amount not to exceed  
6 one-half of the original penalty.

7 DONE at Olympia, Washington this 6th day of March, 1973.

8 POLLUTION CONTROL HEARINGS BOARD

9 Walt Woodward  
10 WALT WOODWARD, Chairman

11  
12 W. A. GISSBERG, Member

13 James T. Sheehy  
14 JAMES T. SHEEHY, Member

15  
16 Mr. W. A. Gissberg, the other member of this Board, not having  
17 participated in the hearing on this matter has declined to sign this  
18 Order.

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